

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2890 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

MANIBEN WD/O BHOLABHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RD DAVE for Petitioners

MR DP JOSHI, AGP for Respondent Nos. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the order dated 24.3.1998 (Annexure "A" to the petition) passed by the Collector, Gandhinagar cancelling the allotment of plot bearing No. 24/1 at Gandhinagar admeasuring 90 sq.mtrs. made in favour of Shri Bholabhai B. Patel, the late husband of petitioner No.1 and father of petitioner Nos. 2 and 3.

3. The facts leading to filing of this petition, as averred by the petitioners, are as under :-

3.1 Under a scheme dated 23.1.1990, which is produced at Annexure "B" to the petition, applications for allotment of plots at Gandhinagar at concessional rate were invited in the Collector's office by 31.3.1990. Late Shri Bholabhai B. Patel, Deputy Executive Engineer in the State service on deputation with the Gujarat Water Supply & Sewerage Board, had applied on 14.3.1990 and the application was sent by registered post A.D. The slip acknowledging receipt of the letter was signed by the concerned employee in the office of the Collector, Gandhinagar on 23.3.1990 and the same was returned to Shri Bholabhai B. Patel on 24.3.1990 as per the postal stamp on the slip, photostat copy of which is produced at Annexure "C".

3.2 As nothing was heard, Shri Bholabhai B. Patel sent reminders dated 11.7.1990, 17.5.1991 and 5.6.1991 (Annexure "D" colly.). The office of the Collector replied that the application of Shri Bholabhai B. Patel was not considered on the ground that it was received by the office after the stipulated date. That communication dated 19.7.1991 at Annexure "E" to the petition was replied to by late Shri Bholabhai B. Patel. In his reply at Annexure "F" to the petition sent on 1.10.1991 it was pointed out that he had sent the application by registered post A.D. which was received by the Collector's office on 23.3.1990. Therefore, it was well within time, since the last date was 31.3.1990. After considering the said application, the Collector issued an order of allotment dated 8.4.1992 at Annexure "M" to the petition. Shri Bholabhai B. Patel was informed that he was allotted a plot admeasuring 90 sq.mtr. as per the scheme contained in the Government Resolution dated 23.1.1990 and that a particular plot will be allotted to him after the computer draw.

3.4 The computer draw was held on 30.4.1992 and by allotment order dated 1.5.1992 Shri Bholabhai B. Patel was allotted plot No. 24/1 in Sector - 3A (New), Gandhinagar. Shri Bholabhai B. Patel paid the necessary amount of Rs. 9,000/- for which the receipt dated 29.5.1992 is produced at Annexure "O" to the petition. Subsequently, the plot number was changed to plot No. 9/1 as per the communication 12.1.1993 at Annexure "P" to the petition.

3.5 Shri Bholabhai B. Patel unfortunately expired on

3.7.1993 and therefore, his heirs, the present petitioners i.e. the widow and the sons of Shri Bholabhai B. Patel, applied to the Government for allotting the plot as the allotment letter was already issued earlier. Necessary information was called for and the same was supplied as is clear from Annexures "R" and "S" to the petition in the year 1996. However, recently on 24.3.1998, the Collector issued the impugned order at Annexure "A" to the petition cancelling the allotment made in favour of late Shri Bholabhai B. Patel on the ground that the application made by Shri Bholabhai B. Patel was inwards in the office of the Collector on 4.4.1990 and, therefore, it was not received before 31.3.1990.

3.6 The present petition challenges the aforesaid order dated 24.3.1998 (Annexure "A").

4. At the hearing of the petition, Mr R.D. Dave, learned counsel for the petitioners has submitted that apart from the fact that the aforesaid order was passed without giving the petitioners any opportunity of being heard, earlier this very objection was raised by the Collector's office in the year 1991 as per the communication dated 19.7.1991 (Annexure "E") and Shri Bholabhai B. Patel had given reply to the same. The application was received by the concerned employee on 23.3.1990 as per the date on the acknowledgment slip which was returned to Shri Bholabhai B. Patel on 24.3.1990 as per the postal stamp on the acknowledgment slip (Annexure "C"). Hence, the application was received by the office of the Collector well within the time limit and merely because the application was not inwards by 31.3.1990, Shri Bholabhai B. Patel or his heirs cannot be blamed because the Collector had found the aforesaid explanation to be satisfactory in the year 1991 and only thereafter the allotment was made as is clear from the documents dated 8.4.1992 (Annexure "M"), 1.5.1992 (Annexure "N") and 12.1.1993 (Annexure "P").

5. In reply, Mr Joshi, learned AGP has submitted that since the inward register mentioned that the application was received on 4.4.1990, the Collector was justified in passing the impugned order.

6. Having heard the learned counsel for the parties, it appears that this very objection was raised by the Collector in July, 1991 and reply of Shri Bholabhai B. Patel was found to be satisfactory. The application was not only sent on 14.3.1990 but acknowledgment slip (Annexure "C") shows that it was posted on 21.3.1990 and

the acknowledgement slip was also signed by the concerned employee in the Collector's office on 23.3.1990, and it was sent back to Shri Bholabhai B. Patel on 24.3.1990 as per the postal stamp on the acknowledgment slip. In the facts of the present case, it is, therefore, not possible to believe that the application of Shri Bholabhai B. Patel had not reached the Collector's office before 31.3.1990 merely because it is found to have been inwards on 4.4.1990. The impugned order of the Collector is, therefore, such which no reasonable person would arrive at on the basis of the material on record. The impugned order must, therefore, be struck down as arbitrary and violative of the fundamental rights of the petitioners under Articles 14 and 300A of the Constitution.

7. The petition is, therefore, allowed. The impugned order dated 24.3.1998 (Annexure "A" to the petition) is quashed and set aside and the respondents are directed to implement and act upon the letter dated 8.4.1992 (Annexure "M" to the petition) and the allotment letter dated 12.1.1993 (Annexure "P" to the petition) allotting plot admeasuring 90 sq.mtrs. and bearing plot No. 9/1 in Sector 3-A (New) at Gandhinagar within one month from the date of receipt of a certified copy of this order.

8. Rule is made absolute to the above extent with costs which are quantified at Rs. 2,000/- (Rupees Two thousand only). The costs shall be paid to the petitioners within two months from today.

Direct Service is permitted.

Sd/-

July 6, 1998 (M.S. Shah, J.)